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ALLSTATE INDEMNITY COMPANY
12

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**
15

16 DIANE MYERS,
17 Plaintiff,
18
19 v.
20 ALLSTATE INDEMNITY COMPANY,
DOES 1 to 20, inclusive,
21 Defendants.
22

Case No. SACV14-00406-JLS (DFMx)

The Honorable Josephine L. Staton
Courtroom 10A

**DECLARATION OF CARLA STYLES
IN SUPPORT OF DEFENDANT
ALLSTATE INDEMNITY
COMPANY'S MOTION FOR
SUMMARY JUDGMENT, OR
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT**

DATE: June 12, 2015
TIME: 2:30 p.m.

[Complaint Filed: February 13, 2014]

1 I, Carla Styles, declare:

2 1. I am a Senior Claims Adjuster for Allstate Indemnity Company
3 (“Allstate”). I have been working for Allstate for about 29 years. Except where the
4 context indicates otherwise, I have personal, firsthand knowledge of the following
5 facts.

6 2. As a Senior Claims Adjuster, my job responsibilities include adjusting
7 uninsured and underinsured motorist claims arising from automobile accidents,
8 including injury claims. As part of my job duties when adjusting an underinsured
9 motorist claim, I review the insurance policy and claim file, gather information from
10 the insured and others (i.e., medical providers) regarding the injuries, review
11 medical records and any other information regarding the claim, obtain an
12 independent medical examination if applicable, evaluate the claim based on
13 information provided, and pay claims based on the information provided. I also
14 have extensive experience, knowledge, and training in evaluating personal injuries,
15 including 15 years of reviewing and interpreting medical records and 15 years of
16 consultation with nurses, doctors, chiropractors, and others in the medical profession
17 in connection with the adjustment of claims. I have also spent over 15 years
18 reviewing and adjusting thousands of medical bills in thousands of claims including
19 charges for physical therapy, surgery, chiropractic care, epidural and other steroid
20 injections, and other accident-related medical treatments, and evaluating and
21 determining reasonable and customary charges for medical services based on
22 customary charges by medical professionals throughout Southern California. As a
23 Senior Claims Adjuster, I estimate that I have evaluated over 10,000 injury claims
24 and reviewed and interpreted thousands of pages of medical records.

25 3. In my capacity as a Senior Claims Adjuster, I am personally familiar
26 with the manner in which Allstate files and records are generally prepared and
27 maintained with respect to underinsured motorist claims. As part of its normal
28 business activities, Allstate’s employees and representatives maintain information

1 that Allstate generates and receives regarding claims and losses in a claim file and
2 claim notes. The claim file for a particular underinsured/uninsured motorist claim
3 generally contains records and documentation regarding Allstate's handling of that
4 claim, including correspondence, notes, medical reports and charts, medical bills
5 and invoices, payment records, and compilations of other data prepared at or near
6 the time of the acts, events or conditions identified or described in each document.
7 The claim notes function as a diary of activities regarding a given claim that are
8 entered by adjusters or other claim personnel at or near the time of the acts or events
9 described therein. Allstate relies upon information in claim files, claim notes, and
10 policy files for the investigation, adjustment, and payment of claims. True and
11 correct copies of relevant excerpts from the claim notes are attached as **Exhibit 2** to
12 Allstate's Notice of Filing of Exhibits in support of its Motion for Summary
13 Judgment or, Alternatively, Partial Summary Judgment ("NOF") and are maintained
14 as part of the claim file.

15 4. I was personally involved in handling Diane Myers' ("Ms. Myers")
16 underinsured motorist claim ("UIM claim") arising out of her April 3, 2012
17 automobile accident. I was assigned to the claim in January 2013 when Ms. Myers'
18 made an underinsured motorist claim to Allstate. At the time of my assignment, I
19 reviewed all the claim notes and file documents that were generated before my
20 involvement.

21 5. As part of my job duties as Senior Claims Adjuster, I reviewed
22 Allstate's claim file and any other relevant documents in Allstate's possession
23 relating to Ms. Myers' UIM claim and am familiar with their contents.

24 6. According to Allstate's records, at the time of the April 3, 2012
25 accident, Ms. Myers was insured under an Allstate automobile policy. The policy
26 provided UIM coverage in the amount of \$250,000 and medical payments coverage
27 in the amount of \$5,000. Attached as **Exhibit 1** to Allstate's NOF are true and
28 correct copies of the Allstate policy, declarations and endorsements.

1
2 7. On or about April 18, 2012, Ms. Myers reported to Allstate that she
3 was in an accident about two weeks earlier, on April 3, 2012. Attached as **Exhibit 2**
4 **at pp. 66-67** to Allstate's NOF are true and correct copies of relevant excerpts from
5 the claim notes.

6 8. On April 18, 2012, Allstate sent a letter to Ms. Myers asking her to
7 provide a list of medical providers and a medical authorization so that Allstate could
8 obtain her medical records. Attached as **Exhibit 3** to Allstate's NOF is a true and
9 correct copy of Allstate's April 18, 2012 letter, which is maintained in the claim file
10 in the ordinary course of business.

11 9. In April 2012, Allstate inspected Ms. Myers' vehicle. Allstate paid
12 Myers over \$8,000 for the vehicle to be repaired and a rental car. Attached as
13 **Exhibit 4** to Allstate's NOF is a true and correct copy of a payment ledger for the
14 automobile repair and the rental car, which is maintained in the claim file in the
15 ordinary course of business.

16 10. In May 2012, Allstate began paying medical payments coverage.
17 Allstate paid the full \$5,000 medical payments coverage limit for Ms. Myers'
18 medical expenses. Attached as **Exhibit 5** to Allstate's NOF is a true and correct
19 copy of the payment ledger reflecting the \$5,000 payment which is maintained in
20 the claim file for the medical payments coverage in the ordinary course of business.

21 11. On January 7, 2013, Ms. Myers demanded arbitration for her UIM
22 claim, but she had not yet submitted proof that she had exhausted the policy limits
23 of the at-fault driver, which is require for a UIM claim to accrue. Attached as
24 **Exhibit 6** to Allstate's NOF is a true and correct copy of the January 7, 2013 letter
25 from Ms. Myers' attorney, which is maintained in the claim file in the ordinary
26 course of business.

27 12. On January 24, 2013, Ms. Myers' attorney, Steven Zwick, sent a letter
28 to Allstate making a UIM claim on behalf of Ms. Myers. Mr. Zwick included proof

1 that Ms. Myers had been paid the \$15,000 underlying limits from the at-fault driver.
 2 Because the Insurance Code and the policy require the insured to exhaust all
 3 available policy limits for the loss before making a UIM claim, Ms. Myers' UIM
 4 claim accrued on January 24, 2013, when she submitted proof that she recovered
 5 policy limits from the at fault driver. Mr. Zwick also demanded \$250,000 policy
 6 limits, less the \$15,000 offset for payment from the at-fault driver's insurer,¹
 7 totaling a net demand of \$235,000. In his letter, Mr. Zwick specifically claimed
 8 \$52,919 for medical expenses and \$300,000 for general pain and suffering, totaling
 9 \$352,919. Mr. Zwick's letter did not contain a monetary demand for future medical
 10 expenses, and stated that future medical expenses were "unknown". Attached as
 11 **Exhibit 7** to Allstate's NOF is a true and correct copy of Mr. Zwick's January 24,
 12 2013 letter with its attachments, which is maintained in the claim file in the ordinary
 13 course of business.

14 13. Mr. Zwick also included some medical records with his January 24,
 15 2013 letter, but I noticed that some medical records were missing. On January 30,
 16 2013, I sent Mr. Zwick a letter asking him to provide me with a list of Ms. Myers'
 17 medical providers and a signed medical authorization so that I could obtain all of
 18 Ms. Myers' medical records directly from her medical providers. Attached as
 19 **Exhibit 8** to Allstate's NOF is a true and correct copy of my January 30, 2013 letter
 20 with its attachments, which is maintained in the claim file in the ordinary course of
 21 business.

22
 23
 24 _____
 25 ¹ I understand from handling these claims over the years that there are two offsets that
 26 apply to reduce the amount of UIM coverage available under the policy comprised of
 27 payments made under the medical payments coverage and payments made by the at-fault
 28 driver's insurer. The offsets for Ms. Myers' claim totaled \$20,000 (\$5,000 that Allstate
 paid for medical payments coverage and \$15,000 paid by the at-fault driver's insurer).

1 14. Mr. Zwick never provided me with the medical authorization that I
2 requested. He sent me an authorization for release of records to him, but not to me,
3 which I could not use. He also did not send me the list of medical providers that I
4 requested.

5 15. In February 2013, I asked Mr. Zwick for specific medical records that
6 were missing from his demand package. Specifically, on February 11, 2013, I spoke
7 with Mr. Zwick over the phone and sent him a letter. In the phone call and letter, I
8 asked for missing medical reports from Ortho Specialties and I also confirmed that
9 Ms. Myers did not receive chiropractor treatment. Attached as **Exhibit 9** to
10 Allstate's NOF is a true and correct copy of my February 11, 2013 letter which is
11 maintained in the claim file in the ordinary course of business.

12 16. On February 21, 2013, I sent Mr. Zwick another letter following up
13 regarding the missing orthopedic reports. Attached as **Exhibit 10** to Allstate's NOF
14 is a true and correct copy of my February 21, 2013 letter which is maintained in the
15 claim file in the ordinary course of business.

16 17. On March 7, 8, and 19, Mr. Zwick provided missing medical records
17 that I had requested. The missing reports were from Dr. Prietto, who was Ms.
18 Myers' first orthopedic surgeon who she saw after the accident. From these new
19 records, I observed that Dr. Prietto had ordered an MRI of Ms. Myers' shoulder and
20 based on the findings determined that her shoulder symptoms did not necessitate
21 surgery. Ms. Myers subsequently switched to a new doctor (Dr. Van Der Reis), who
22 performed the surgery. Attached as **Exhibit 11** to Allstate's NOF are true and
23 correct copies of Mr. Zwick's March 7, 8, and 19 letters with attachments, which are
24 maintained in the claim file in the ordinary course of business.

25 18. Once I had the missing medical records, in late March 2013, I
26 evaluated the claim. I reviewed the demand letter and the medical documentation.
27 In the demand, Ms. Myers was claiming that she sustained a left shoulder injury for
28 which she underwent surgery, a meniscus tear in her left knee, and pain in her lower

1 back and right rib. I reviewed the medical records and made the following
2 observations. In April 2012, Ms. Myers had initially seen Dr. Prietto complaining
3 of pain in her left shoulder and left knee. In April 2012, Dr. Prietto ordered an MRI
4 of her left shoulder and observed left shoulder rotator cuff tendinitis, which is a non-
5 acute condition that occurs over time. Based on those findings, Dr. Prietto
6 determined that Ms. Myers' symptoms did not necessitate surgery. Dr. Prietto also
7 examined Ms. Myers' left knee and determined that she had patellofemoral arthritis,
8 which is a pre-existing degenerative knee disease. He recommended physical
9 therapy for both her left shoulder and left knee to resolve her pain. On April 24,
10 2012, Ms. Myers went to a physical therapist (Kerri Pooley) recommended by Dr.
11 Prietto. The physical therapist reported that Ms. Myers had pre-existing "low back
12 pain." Instead of completing the physical therapy recommended by Dr. Prietto, on
13 June 5, 2012, Ms. Myers visited a different doctor (Dr. Van Der Reis). In August
14 2012, Dr. Van Der Reis performed surgery on Ms. Myers' shoulder notwithstanding
15 Dr. Prietto's recommendation against it. Dr. Van Der Reis also ordered an MRI of
16 Ms. Myers' knee. The MRI showed there was no meniscus tear, but rather, that Ms.
17 Myers had chondromalacia, a pre-existing degenerative disease. I also observed that
18 Dr. Prietto and Dr. Van Der Reis did not opine on Ms. Myers' claimed lower back
19 or rib pain. I observed that, on June 28, 2012, about two months after the accident,
20 Ms. Myers visited a pain management doctor named Dr. Green complaining of
21 lower back, rib, and left knee pain. Dr. Green also did not opine on the cause of Ms.
22 Myers' lower back or rib pain. He recommended chiropractic treatment for Ms.
23 Myers' pain, but I later learned from Ms. Myers' counsel that Ms. Myers did not
24 pursue the chiropractic treatment. The records showed that she went to Dr. Green
25 monthly from August 2012 to January 2013 and he refilled her pain medication
26 prescriptions. I observed that none of Ms. Myers' three doctors (Dr. Prietto, Dr.
27 Van der Reis and Dr. Green) opined on the cause of Ms. Myers' claimed lower back
28 injury and rib pain. I observed that the physical therapist that Ms. Myers visited

1 right after the accident, in April 2012, attributed Ms. Myers' low back pain to a pre-
 2 existing injury. **Exhibits 7 and 11** to the NOF contain the medical records that I
 3 reviewed. Also see **Exhibit 2, at page 55-56** which are claim notes related to the
 4 evaluation.

5 19. Notwithstanding the conflicting information, I gave Ms. Myers credit
 6 for all of her medical treatment in my evaluation. I accepted all of Myers' medical
 7 bills for payment, and adjusted them to the reasonable and customary amounts for
 8 the services provided based on my 29 years of experience adjusting medical bills
 9 and my evaluation of each of the bills submitted and the services provided. The
 10 adjustment also accounted for a duplicate \$10,000 charge for the shoulder surgery.
 11 The reasonable medical expenses for all of the medical services provided totaled
 12 \$31,724 Attached as **Exhibit 12** to Allstate's NOF is a true and correct copy of my
 13 dissection worksheet wherein I handwrote the actual amounts stated on the medical
 14 bills and the reasonable and customary amounts for those services, which is
 15 maintained in the claim file in the ordinary course of business. Also see **Exhibit 2,**
 16 **at page 55-56** which are claim notes related to the evaluation.

17 20. I valued the claim at \$45,500 (\$25,500 new money and \$20,000 in
 18 applicable offsets). My offer included all of Ms. Myers' reasonable medical
 19 expenses of \$31,724 plus about \$14,000 for pain and suffering.

20 21. In March 2013, I made the offer based on my \$45,500 valuation. On
 21 March 28, 2013, Mr. Zwick sent me a letter wherein he rejected my \$45,400 offer
 22 (\$25,500 new money plus the \$20,000 offsets) and demanded payment for a future
 23 knee surgery. Attached as **Exhibit 13** to Allstate's NOF is a true and correct copy
 24 of Mr. Zwick's March 28, 2013 letter acknowledging the offer amount and rejecting
 25 it, which is maintained in the claim file in the ordinary course of business.

26 22. In April 2013, based on the future knee surgery claim and the pre-
 27 existing conditions documented in the medical records (i.e., the lower back pain, the
 28 knee chondromalacia), I decided to retain an independent orthopedic surgeon to

1 provide a medical opinion on the nature, cause and extent of Ms. Myers' injuries. I
2 spoke with Mr. Zwick over the phone about this, and documented it in a claim note.
3 Attached as **Exhibit 2, at 54** to Allstate's NOF is a true and correct copy of my
4 claim note documenting my discussion with Mr. Zwick that Allstate planned to
5 obtain an independent medical evaluation (known as an "IME").

6 23. In April 2013, Allstate retained counsel to obtain an independent
7 medical evaluation of Ms. Myers on Allstate's behalf and to handle the arbitration. I
8 learned that Ms. Dadaian immediately propounded written discovery to Ms. Myers
9 to obtain a list of her medical providers because Mr. Zwick never sent the signed
10 medical authorization that I had requested of him. I understood that Ms. Dadaian
11 was going to use the list of providers to subpoena their records in order to provide
12 all the medical records to the independent medical doctor.

13 24. By September 2013 additional medical records were produced that
14 Allstate's arbitration counsel subpoenaed. These records were not previously
15 provided to Allstate by Ms. Myers. Attached as **Exhibit 14** are true and correct
16 copies of some of the subpoenaed medical records.

17 25. The medical records that were subpoenaed from the medical providers
18 reflected that Ms. Myers had additional pre-existing injuries to some of the same
19 parts of her body that she was claiming in this case. For example, from 2008
20 through 2011, Ms. Myers was treated for a lower back injury for which she had been
21 receiving epidural injections. No doctor has since opined that the April 2012
22 accident exacerbated or caused a lower back injury. From 2008 up through 2011,
23 Ms. Myers was diagnosed with chronic pain, and she had been treated for pain to
24 her back, head, legs, shoulder, and rib. In 2011, Ms. Myers was treated for a
25 prescription drug addiction, which raised questions about some of her post-accident
26 pain complaints for which she received opiate/barbiturate prescriptions. See
27 **Exhibit 14.**
28

1 26. I learned that, in July 2013, Ms. Dadaian agreed to use one of the
2 arbitrators that Ms. Myers' attorney selected and, in August 2013, the parties had
3 agreed to a December 2013 arbitration date. I also learned that Ms. Dadaian took
4 Ms. Myers' deposition in August 2013.

5 27. I learned that, in October 2013, Ms. Dadaian had Ms. Myers examined
6 by a board certified orthopedic surgeon, by the name of Scott Rosenzweig after she
7 had provided him with Ms. Myers' medical records.

8 28. In October 2013, I received and reviewed a copy of Dr. Rosenzweig's
9 report. In his report, Dr. Rosenzweig concluded that Ms. Myers sustained a soft
10 tissue shoulder injury and possibly knee bruising (contusion) from the accident and
11 that injections and physical therapy treatment for those injuries was reasonable.
12 However, Dr. Rosenzweig agreed with Ms. Myers' first orthopedic doctor that
13 shoulder surgery was not medically necessary based on Ms. Myers' symptoms and
14 MRI results, and that it was premature before completion of the physical therapy
15 regimen. He also concluded that Ms. Myers had chondromalacia, a pre-existing
16 degenerative knee disease, and that any need for a future knee surgery was not
17 attributable to the accident. He also determined that Ms. Myers did not sustain a
18 lower back injury as a result of the accident. Attached as **Exhibit 22** to the NOF is a
19 true and correct copy of Dr. Rosenzweig's October 18, 2013 medical report, which
20 is maintained in the claim file in the ordinary course of business. See also **Exhibit**
21 **2, at p. 53**, for my claim notes related to my review of the doctor report.

22 29. Upon reviewing Dr. Rozenzweig's report, in November 2013, I re-
23 evaluated the claim. Although I had already made an offer that covered all of Ms.
24 Myers' reasonable medical expenses, and although the medical expert determined
25 that Ms. Myers did not need a future knee surgery as a result of the accident, I raised
26 my valuation to \$73,000 (\$53,000 new money offer, after the \$20,000 offsets), as a
27 compromise in an effort to resolve the claim. That amount was enough to cover all
28 of Ms. Myers' reasonable medical expenses of \$31,729 plus over \$40,000 for pain

1 and suffering. The offer was also enough to cover Ms. Myers' claimed medical
2 expenses of \$52,919 without the adjustments. In sum, Allstate's offer was enough
3 to cover all medical expenses, plus pain and suffering. Ms. Myers rejected the offer,
4 and continued to demand policy limits.

5 30. In November 2013, I learned that Dr. Rosenzweig had his deposition
6 taken. In the deposition, he was asked about whether he believed Ms. Myers had a
7 rib injury from the accident. I learned that he opined that she did not have any rib
8 dislocation, but that she may have had some rib bruising from the accident. That
9 opinion did not change my evaluation because I had already allowed for all of Ms.
10 Myers' medical treatment and for pain and suffering, and there was no claim for
11 future treatment to her rib.

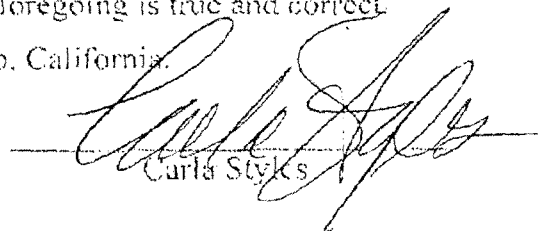
12 31. I learned at the time of the arbitration hearing that Ms. Myers had just
13 announced a brand new monetary demand of \$66,438 for "future" epidural
14 injections in her lower back for a period of 4 years. This demand was not
15 previously made to Allstate, Allstate had never received any medical report of a
16 doctor that had opined that Ms. Myers' lower back injury was related to the accident
17 (the only report with an opinion was the independent medical expert who opined
18 that the lower back pain/injury was unrelated to the accident), and none of the
19 documents that Ms. Myers provided to Allstate included any specific monetary
20 demand for epidural injections in her lower back.

21 32. On December 13, 2013, the arbitration took place. The arbitrator
22 awarded Ms. Myers \$297,655, which he reduced to policy limits of \$250,000
23 (\$230,000 after applicable offsets). Attached as **Exhibit 24** to the NOF is a true
24 and correct copy of the arbitration award, which is maintained in the claim file in the
25 ordinary course of business.

33. In January 2014, Allstate issued a check to Ms. Myers for the full \$230,000 arbitration award. Attached as **Exhibit 25** to the NOP is a true and correct copy of a ledger reflecting the payment of the \$230,000 arbitration award, which is maintained in the claim file in the ordinary course of business.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed April 30, 2015, at San Diego, California.


Carla Styles